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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,306	12/09/2003	James R. Harte	33994-CIP1	3637

7590 07/27/2004

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	of HARTE ET AL.
	10/731,306		
	Examiner Sue A. Purvis	Art Unit 1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 July 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15, 17-29 and 31-39 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-14, 19-29 and 31-39 is/are allowed.
 6) Claim(s) 15, 17 and 18 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes (US Patent No. 3,379,466) in view of Kearney (US Patent No. 4,680,082).

Hughes discloses a label tamping device comprising a plurality of adjacent, hollow plates located in side-by-side relationship for receiving a label and then applying it. Each of the plates presenting an open label-engaging end and an open remote end, and apparatus located proximal to said remote ends for drawing air through said hollow plates in order to create reduced pressure conditions at said label- engaging ends.

Hughes does not have the tamping assembly being shiftable.

Kearney discloses a tamping assembly which pivots from a label-receiving position to a label-applying position.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the tamping assembly in Hughes be pivotable allowing for easier handling of the label, because Kearney teaches of the advantages of such a feature, one advantage being that it allows for the label to be more easily separated from the backing strip.

Art Unit: 1734

Regarding claim 17, Kearney includes a fan assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fan assembly in Hughes to create the reduced pressure environment, because doing so is well known in the art.

Regarding claim 18, Hughes in view of Kearney includes a slotted manifold with the plates received within slots of said manifold and shiftable relative thereto.

Double Patenting

3. The Double Patenting rejection set forth in the previous Office Action is withdrawn. The applicant expressly abandoned Application No. 10/460,711 on 15 July 2004.

Allowable Subject Matter

4. Claims 1-14, 19-29, and 31-39 are allowed.
5. The following is an examiner's statement of reasons for allowance:
 - a. Regarding claims 1-14, 19, and 20, the amended claims clearly define the movement as seen in Figures 3, 4, and 9. The prior art apparatus disclosed in Kearney does not include this feature, nor is it capable of performing the movement as defined. Furthermore, there is no reason or suggestion for modifying.
 - b. Regarding claims 21-29 and 31-34, the reasons for allowance are set forth in the previous office action dated 21 April 2004.
 - c. Regarding claims 35, 37, and 39, the structure of Kearney in view of Hughes does not allow for an internal baffle structure, which would result in tortuous air flow as required by the claim 35, nor is there a reason or suggestion for having a structure which allows for an internal baffle structure as required by the claim.

Art Unit: 1734

d. Regarding claims 36 and 38, having a label advanced on a plurality of spaced apart belts is shown in Beliveau (US Patent No. 5,281,296) Kuchek et al. (US Patent No. 4,046,613), and Simon (US Patent No. 6,634,404 B1). But there is no reason or suggestion for having the engaging ends of the plates in Kearney in view of Hughes to pass through the belts upon movement between the label-receiving and label-applying positions. Kuchek discloses pins (73) to push through the belts, but the pins are used to stop the movement of the labels and are not hollow allowing for reduced pressure conditions at their end. Simon discloses plunger elements which are capable of engaging the label and pressing through the conveyor, but the structure of Simon is not equivalent to the structure the applicant is claiming and there is no reason or suggestion to modify Kearney in view of Hughes based on the teachings of Simon.

Response to Arguments

6. Applicant's amendments have successfully overcome the previous rejection except that set forth above. Applicant failed to amend claims 15, 17, and 18. The applicant also failed to argue why these claims should be found allowable.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory

Art Unit: 1734

period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (571) 272-1236. The examiner can normally be reached on Monday through Friday 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sue A. Purvis
Primary Examiner
Art Unit 1734

SP
July 24, 2004